

**BEFORE
CHARLES B. OVERSTREET
ARBITRATOR**

CAREFLITE, Grand Prairie, Texas §
Employer, §

and §

OFFICE AND PROFESSIONAL EMPLOY- §
EES INTERNATIONAL Union, §
Union. §

AAA Case No. 71 300 L 0051306

DATE OF HEARING: January 30,31, 2007.

HOUR OF HEARING: 9:05 am.

PLACE OF HEARING: Sheraton Grand Hotel, Dallas/Ft. Worth Inter-
national airport.

ARBITRATOR: Charles B. Overstreet, selected by mutual agreement
by the Parties through procedures of the American
Arbitration Association.

APPEARANCES:

For the Employer: Henry Robinson, Esq.
KELLY HART & HALLMAN LLP
201 Main Street, Suite 2500
Fort Worth, TX 76102

For the Union: William Lurye, Esq.
ROBEIN, URANN & LURYE
(A Professional Law Corporation)
2540 Severn Avenue, Suite 400
Metairie, Louisiana 70009-6768

ISSUE

Careflite 1/ and the Office and Professional Employees International Union 2/ stipulated the Issues to be as follows: "1. Is the Grievance arbitrable? 2. Did Grievant violate the Company/Union Agreement? and 3. Was there 'Just Cause' to discharge Grievant Craig Hilton?. If the answer to Nos. 2 or 3 above is in the affirmative, then what is the proper remedy?" In their Brief, the Employer dropped Issue No 1, supra.

The Employer and Union positions are edited excerpts from the Parties Post Hearing Briefs.

The Parties presented all proofs and witnesses they desired to present. Lists of Witnesses and Exhibits are contained as attachments to this document.

A transcript of the Hearing was not made. References to exhibits are designated as CX (Company exhibits), UX (Union exhibits), and JX (Joint exhibits), followed by the number of the exhibit.

BACKGROUND

OPEIU and Careflite are parties to a collective bargaining Agreement that covers its pilots. Although OPEIU is the certified bargaining representative under the Railway Labor Act, Local 108 assists in the enforcement of the contract. Only the International can agree to modify the terms of the collective bargaining agreement.

Grievant, Craig Hilton, was employed by Careflite as an EMS helicopter pilot from December 10, 1998 to June 6, 2006 when he was

1/ Hereinafter referred to as the Employer or Company.

2/ Hereinafter referred to as the Union.

discharged from employment. Careflite provides helicopter EMS services . Pilots work 12 hour shifts. The medical crews work 24 hour shifts. There are sleeping quarters provided for the crews.

EMPLOYER POSITION

The CBA, Art. 22 § 2 provides that, "All discipline including a loss of or reduction in pay and termination will be based on just cause."

The Careflite Employee Handbook contains a "Work place Violence" section setting forth a "zero tolerance for workplace violence" which is defined to include, among other things, "intimidation of or attempts to instill fear in others" and "belligerent speech, excessive arguing, swearing...." (CX 25, p. 14). The Handbook also sets forth a non-exhaustive list of "Guidelines of Appropriate Conduct." Among other things, "profane, obscene, abusive, indecent, or threatening language" is prohibited. (CX-25, p. 13).

Careflite requires a respectful, courteous workplace, as set forth in the job description for "Line Pilot" signed by Grievant (CX-23, p.6). The section titled "Professional Conduct and Growth" sets forth requirements of "ethical, courteous and professional behavior..." (CX-23, p.3), "tact and diplomacy," and "will address co-workers in a respectful manner at all times." (CX-23, p.2).

The job description requires a "positive approach to problem solving (CX-23, p. 3) "Constructive criticism of a co-worker or supervisor will be offered in a private setting and delivered in a positive and respectful manner." (Id., p.2).

As an air carrier in an industry with one of the highest accident rates in all of aviation, Careflite gives priority to safety and accident prevention. As an emergency care provider,

Careflite gives priority to maximizing the survival chances for critically ill or injured patients. Careflite policies are designed to promote these priorities; Safety and Teamwork are core values. Careflite has transported over 72,000 patients by air without injuring a patient as a result of an aviation accident, one of the greatest safety records in an industry with one of the highest accident rates in all of aviation. Knowing that interpersonal conflict may be counter-productive to accident prevention and the rendering of the best possible emergency care, Careflite requires employees to treat co-workers "in a respectful manner at all times" and to be "courteous and professional" Careflite has "zero tolerance" for intimation, belligerent speech, or swearing. Abusive or threatening language is prohibited

In early 2006, Grievant, a pilot, who also served as the pilot's union representative, became confrontational and aggressive toward nurses and paramedics not in the pilot bargaining unit and over whom he had no supervisory authority. Grievant resisted urgings from co-workers and management that he moderate his behavior and/or get professional help.

On March 22, 2006, Grievant engaged in three incidents of unprecedented misconduct. First, he committed a major safety violation when, while the helicopter was in flight to an accident scene, he intentionally turned off the Master Avionics Switch controlling all ten communication and navigation systems. Grievant did this because, as required by the Crew Resource Program and in accordance with past practice, a nurse had communicated with first responders on the ground with a critically ill patient. Second, he committed an act that would have interfered with the rendering of

emergency care when he ordered a nurse to turn off oxygen that, in accordance with long standing protocol, she had just turned on for a critically ill patient about to be loaded onto the helicopter. Grievant did this because he did not want to perform his duty of changing out the oxygen canister. Later that night, Grievant threatened to turn off the Master Oxygen Switch. Third, a paramedic had been working in the emergency room and was not assigned to offload patients from helicopters. Hours later, in the presence of other people, Grievant took the unprecedented step of confronting and using profanity in chastising the paramedic for not having earlier helped offload a patient from a helicopter, despite the facts that it had not been his job and his help had not been needed.

A fair and objective investigation was conducted. The managers, former Army Aviators and Airline Transport Pilot rated (the highest certification) bent over backwards to allow Grievant to keep his job. On April 12, 2006, Careflite placed him on disciplinary probation for six months with the admonition that he would be discharged if he engaged in any misconduct, imposed a two day unpaid suspension, and ordered him to apologize. Grievant and the Union did not grieve or appeal any of this discipline.

Grievant squandered the opportunity to keep his job. While on disciplinary probation, he engaged in subsequent misconduct. On May 16, 2006, in accordance with long standing past practice, a nurse was performing the required task of inputting patient medical information into a special software chart on a computer shared by nurses and pilots and located in the pilot's room. Grievant who claims he wanted to nap, became angry, swore, and belligerently de-

manded the nurse get off the computer and out of the room. Without finishing the chart, the nurse stopped charting and left the room, after which Grievant turned on a sports program on television.

A fair and objective investigation was conducted. While on disciplinary probation Grievant had engaged in subsequent misconduct. Just cause existed, discharge was an appropriate level of discipline, and Grievant was discharged. Grievant had again acted impulsively, became angry, used belligerent speech, swore, and again tried to dictate to and interfere with the job duties of a medical crew member not in the pilot bargaining unit and over whom Grievant had no supervisory authority. Grievant had again violated the requirement that employees act in a courteous and respectful manner which is conducive to safety/accident prevention and quality emergency care. Common sense, federal law and moral responsibility require an air medical emergency carrier not wait for an aviation accident or patient death before discharging an employee.

UNION POSITION

OPEJU and Careflite are parties to a collective bargaining agreement that covers its pilots. Although OPEJU is the certified bargaining representative under the Railway Labor Act, Local 108 assists in the enforcement of the contract. Only the International can agree to modify the terms of the collective bargaining agreement.

Grievant was employed by Careflite as an EMS helicopter pilot from December 10, 1998 to June 6, 2006, when he was discharged from employment. Careflite provides helicopter EMS services. Pilots work 12 hour shifts. The medical crews work 24 hour shifts.

There are sleeping quarters provided for the crews.

Grievant routinely received excellent appraisals. His most recent appraisal prior to his discharge, February 2006, rated Grievant as "exceeds expectations" in most categories rated. The chief pilot, his supervisor, stated that "Grievant did a great job this past year for Careflite".

In Grievant's December 2004 appraisal, Flight Director Mike Taylor hand wrote "thanks for your extra efforts! Good job."

(UX-2) The Base Manager stated that ".....has done a great job this year," and the Chief Pilot noted that "....has taken extra steps above his normal duties over the past year to help the IFR program succeedspent the time to ready himself for the IFR check ride and I considered him to be one of the top pilots I have trained."

On May 16, 2006, Grievant worked the night shift of 6:45 p m to 6:45 a.m. The medical crew was Erik Cook and Donnie Beeson. Grievant, Cook and Beeson flew a few missions, and after returning from a mission around 10:15 p m , Grievant was securing the aircraft, while Beeson and Cook headed toward the crew quarters. Grievant told Cook and Beeson that he would be over in about 15 minutes, and that he wanted to go to bed. When Grievant arrived about 15 minutes later, he found Beeson working in the pilot's room charting on the computer. Grievant told him to wrap it up because he wanted to take a nap. Beeson replied with words to the effect of "Not until I finish my chart." Grievant told Beeson that it was the pilot's room and that the medical crew has other computers to work on besides the pilot's computer. Grievant left Beeson, going into the medical crew's quarters to sit and wait for

Beeson to finish. While leaving the room, Grievant was muttering to himself to the effect that it was "bullshit"¹ Cook heard him, and made a joke of it.² When Beeson left the pilot's room a few minutes later, Grievant went in, turned the lights off, and the television on-he sleeps with the television on - and took a nap. On the next run that evening, there was no tension between Grievant, Cook and Beeson. According to the testimony of Cook, Beeson and Grievant, they laughed and joked and continued to work without incident.

On May 17, after the end of the shift, Grievant called Base Manager Cris Boss. He told Boss that Beeson was in the pilot's quarters, described the events of the night before and asked Wegner to have it clarified with the medical crew that the pilot's area should be primarily for the pilot to rest. Boss acknowledged the request.³

Grievant heard nothing about the incident until May 27, when he was asked by Base Manager Cris Boss to email a statement of the events of May 16. Grievant complied by email, at 12:25 a.m. (CX-32) Grievant stated, in part, that "I don't think this is a really big deal. When I called you all I wanted was someone to ask Donnie to be courteous towards the pilots when using their room at night... like I stated earlier, I believe this has turned into a bigger deal than it really should be." (CX-32) Boss forwarded the email to Ray Duphinais, the Company's Director of Flight Operations, with the

¹ Both Cook and Grievant testified to this.

² Cook testified to this.

³ This was Grievant's testimony. Although Boss was still employed by the Company and available to testify, he was not called as a witness by the Company.

note that "it is the same as I remember him telling me on the phone on the day after it happened."(UX-4).

At 3:47 p.m. on May 27, Ray Dauphinais, sent an email to Grievant, requesting that he answer certain questions about the events of May 16. (CX-34) Grievant responded at 4:31 p.m., for the first time realizing that the Company was conducting a disciplinary investigation into his conduct. Grievant reiterated his statement of May 16. (CX-34)

On June 6, 2006, Grievant was told to report to a disciplinary meeting. He brought OPEIU International Representative Paul Bohelski to the meeting. The meeting was conducted by Base Manager, Cris Boss. Boss presented a memo to Grievant, dated June 6, which stated:

1. On 16 May you initiated a verbal confrontation with a Careflite employee. Your actions created a hostile work environment with the other employee. This is based on the statements from the employees that worked with you that day.
2. On April 12, 2006, you were disciplined and placed on a six month probationary period. The probation was due in part to your confrontational interactions on 22 March 2006 with other Careflite employees. Your actions on 16 June 2006 (sic) violated this probation.
3. Recommended action:
 - . Immediate suspension without pay.
 - . Termination.

Cris Boss

(JX-2)

Notwithstanding the memo's statement that he was being suspended without pay, Grievant was told that he was discharged by Boss.

At the Arbitration Hearing, the Company contended that the Grievance was not arbitrable because Grievant was allegedly a probationary employee notwithstanding that he had been employed

by the Company since 1998. This status, the Company contended, flowed from discipline imposed on Grievant in April 2006. (CX-28)

Arbitrator's Note:

The Company dropped this argument in their Post-Hearing Brief.

The Company discharged Grievant for the event of May 16, contending that Grievant violated a disciplinary probation imposed on April 12, 2006. According to JX-2, which notified Grievant that he was either suspended without pay or discharged, Grievant "created a hostile work environment with another employee."

The hearing before the Arbitrator lasted two days. The April 12, 2006 discipline was the subject of most of the Company's case, which spanned 1 ½ days. This discipline, which was not grieved by Grievant, was for (1) turning off a master avionics switch in flight (Grievant testified that he did so in order to get the nurse's attention after repeatedly trying to do so, in order to be able to hear the report from the ground radio at the accident site - an oil well explosion - so he could hear reports of landing hazards; (2) asked a nurse to not turn a helicopter oxygen nozzle on with the helicopter engine off (Grievant testified that he was concerned about a spark igniting the oxygen when the engine was started); (3) after a patient was off-loaded at the hospital Grievant exchanged words with Company medical employee Cris Belcher who was not assigned to his crew (Grievant testified that he was upset that the medical employee did not assist with off-loading the patient since he was in the vicinity, and instead walked away. Concerning Grievant's exchange of words with Belcher, although the Company claimed it was "confrontation-

al," Pelcher testified he never felt he was in danger, did not believe that Grievant was trying to pick a fight with him, and at no time did he feel threatened. In fact, the Company asserted only that the actions "could have led to a hostile work environment," and not that it did, (CX-28). For all of the actions described above, Grievant was given a two day suspension.

The event of May 16 clearly did not warrant discharge or even discipline, even against the backdrop of the April 12 discipline. Even though the just cause standard cannot be defined absolutely, there are some widely accepted industrial jurisprudence principles that have developed that help in the determination / analysis of just cause in a disciplinary case. The basic elements of just cause which different arbitrators have emphasized have been reduced by Arbitrator Carroll R. Daugherty to seven tests. See **Enterprise Wire Company**, 46 LA 359 (1966). A "no" answer to one or more of the questions means that just cause either was not satisfied or at least was seriously weakened in that some arbitrary, capricious, or discriminatory element was present.

The seven questions are:

1. NOTICE: Did the Employer give to the employee forewarning or foreknowledge of the possible or probable consequences of the employee's disciplinary conduct?

2. REASONABLE RULE OR ORDER: Was the Employer's rules or managerial order reasonably related to (a) the orderly, efficient, and safe operation of the Employer's business, and (b) the performance that the Employer might properly expect of the Employee?

3. INVESTIGATION: Did the Employer, before administering the discipline to an employee, make an effort to discover whether the employee did in fact violate or disobey a rule or order of management?

4. FAIR INVESTIGATION: Was the Employer's investigation conducted fairly and objectively?

